

Message Text

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TO AMEMBASSY BRASILIA

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E.O. 11652: N/A

TAGS: EFIS, BR

SUBJECT: EMBARGO ON FISH IMPORTS FROM BRAZIL

REF: A. BRASILIA 5375, B. JOHNSON/YELLMAN (OES) TELCON

FOLLOWING IS TEXT OF LETTER REQUESTED: (QUOTE)

DEAR MR. SECRETARY:

THIS YEAR OUR SUBCOMMITTEE HAS HELD A SERIES OF OVERSIGHT HEARINGS ON THE ADMINISTRATION OF THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976 (FCMA). AT THE JUNE 5 HEARINGS, REPRESENTATIVES OF OUR DISTANT WATER SHRIMP INDUSTRY ADVISED US OF RECENT ACTIONS TAKEN BY THE GOVERNMENT OF BRAZIL WHICH HAVE RESULT IN SHRIMP VESSELS OF THE UNITED STATES BEING DENIED THE OPPORTUNITY TO CONTINUE FISHING OFF THE COAST OF BRAZIL.

IN PARTICULAR, THE SUBCOMMITTEE WAS ADVISED THAT DURING CALENDAR YEAR 1977 EXTENSIVE EFFORTS WERE MADE BY OUR SHRIMP INDUSTRY AND THE DEPARTMENT OF STATE TO COMMENCE
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SHRIMP INDUSTRY AND THE DEPARTMENT OF STATE TO COMMENCE NEGOTIATIONS WITH BRAZILIAN OFFICIALS IN ORDER TO ASSESS THE BRAZILIAN SHRIMP FISHERY AND TO ESTABLISH A NEW AGREEMENT FOR 1978. NO SUCH MEETING WAS HELD IN 1977 BECAUSE OF THE BRAZILIANS REFUSAL TO ENTER INTO NEGOTIATIONS. FINALLY, THIS YEAR, AFTER THE 1977 AGREEMENT HAD EXPIRED, SUCH A MEETING WITH BRAZILIAN OFFICIALS WAS HELD IN

BRAZIL. AT THAT MEETING, BRAZILIAN REPRESENTATIVES SET FORTH CONDITIONS FOR THE DISCUSSIONS, WHICH WERE AS FOLLOWS: (1) THERE WOULD BE NO CONTINUATION OF A SHRIMP "FISHING" AGREEMENT; AND (2) THE ONLY AVAILABLE BASIS FOR DISCUSSIONS WOULD BE WITHIN THE PARAMETERS OF A JOINT VENTURE LAW RECENTLY ESTABLISHED BY BRAZIL. THAT LAW PROVIDED, IN ESSENCE, THAT ALL FISHING ACTIVITIES CONDUCTED WITHIN 200 MILES OF THE BRAZILIAN COAST MUST BE CARRIED OUT UNDER BRAZILIAN FLAG AND THROUGH A BRAZILIAN CORPORATION. BRAZILIAN NATIONALS MUST HOLD 60 PERCENT OF THE ASSETS OF THE CORPORATION AND 51 PERCENT OF THE VOTING STOCK OF THE CORPORATION.

THE NET EFFECT OF THE BRAZILIAN LAW IS THAT VESSELS OF THE UNITED STATES WOULD LOSE THEIR IDENTITY AS U.S. VESSELS. THE OWNERS OF SUCH VESSELS WOULD HAVE TO OPERATE THEIR VESSELS UNDER BRAZILIAN FLAG AND THEIR ACTIVITIES IN BRAZILIAN WATERS WOULD BE REGULATED BY BRAZILIAN LAW.

IF THESE FACTS ARE CORRECT, THEN IT APPEARS THAT SUCH ACTIONS ON THE PART OF BRAZIL HAVE TRIGGERED THE PROVISIONS OF SECTIONS 205 OF THE FCMA. SECTION 205(A)(1) PROVIDES THAT IF THE SECRETARY OF STATE DETERMINES THAT HE HAS BEEN UNABLE, WITHIN A REASONABLE PERIOD OF TIME, TO CONCLUDE WITH ANY FOREIGN NATION AN INTERNATIONAL FISHERY AGREEMENT ALLOWING FISHING VESSELS OF THE UNITED STATES

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EQUITABLE ACCESS TO FISHERIES OVER WHICH THAT NATION ASSERTS EXCLUSIVE FISHERY MANAGEMENT AUTHORITY, AS RECOGNIZED BY THE UNITED STATES, IN ACCORDANCE WITH TRADITIONAL FISHING ACTIVITIES OF SUCH VESSELS, IF ANY, AND UNDER TERMS NOT MORE RESTRICTIVE THAN THOSE ESTABLISHED UNDER SECTIONS 201(C) AND (D) AND 204(B) (7) AND (10), BECAUSE SUCH NATION HAS (A) REFUSED TO COMMENCE NEGOTIATIONS, OR (B) FAILED TO NEGOTIATE IN GOOD FAITH, THEN THE SECRETARY OF STATE IS REQUIRED TO CERTIFY THAT DETERMINATION TO THE SECRETARY OF THE TREASURY.

MOREOVER, SECTION 205(B) PROVIDES THAT UPON RECEIPT OF ANY CERTIFICATION FROM THE SECRETARY OF STATE UNDER SUBSECTION (A), THE SECRETARY OF THE TREASURY IS REQUIRED TO IMMEDIATELY TAKE SUCH ACTION AS MAY BE NECESSARY AND APPROPRIATE TO PROHIBIT THE IMPORTATION INTO THE UNITED STATES (1) OF ALL FISH AND FISH PRODUCTS FROM THE FISHERY INVOLVED, IF ANY; AND (2) UPON RECOMMENDATION OF THE SECRETARY OF STATE, SUCH OTHER FISH OR FISH PRODUCTS, FROM ANY FISHERY OF THE FOREIGN NATION CONCERNED, WHICH THE SECRETARY OF STATE

FINDS TO BE APPROPRIATE TO CARRY OUT THE PURPOSES OF THIS

SECTION.

APPLYING THE AFOREMENTIONED FACTS TO SECTION 205(A) AND (B), IT IS CLEAR THAT EXTENSIVE EFFORTS WERE MADE BY UNITED STATES REPRESENTATIVES IN 1977 TO NEGOTIATE A FISHING AGREEMENT THAT WOULD ALLOW SHRIMP VESSELS OF THE UNITED STATES EQUITABLE ACCESS TO THE SHRIMP FISHERY OF BRAZIL IN 1978 IN ACCORDANCE WITH TRADITIONAL FISHING ACTIVITIES OF SUCH VESSELS. SINCE YOUR DEPARTMENT WAS UNABLE TO OBTAIN SUCH AN AGREEMENT, THE ACTIONS OF BRAZIL AND THE UNREASONABLE CONDITIONS SET FORTH FOR DISCUSSIONS HAVE RESULTED IN BRAZIL FAILING TO NEGOTIATE IN GOOD FAITH AND, CONSEQUENTLY, THE INABILITY OF YOUR DEPARTMENT TO OBTAIN SUCH AN AGREEMENT WITHIN A REASONABLE PERIOD OF UNCLASSIFIED

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TIME. FURTHERMORE, IT IS APPARENT THAT THE TERMS SET FORTH BY BRAZIL UNDER WHICH VESSELS OF THE UNITED STATES WOULD OPERATE ARE MORE RESTRICTIVE THAN THOSE ESTABLISHED UNDER SECTIONS 201(C) AND (D) AND 204(B) (10) OF OUR ACT.

THEREFORE, UNLESS YOU HAVE FACTS THAT WOULD INDICATE TO THE CONTRARY, IT IS APPARENT THAT THE FACTS ARE SUCH THAT BRAZIL HAS VIOLATED THE PROVISIONS OF SECTION 205(A) (1) AND THAT YOU SHOULD MAKE A DETERMINATION ACCORDINGLY AND CERTIFY SUCH TO THE SECRETARY OF TREASURY. THIS DETERMINATION ACCORDINGLY AND CERTIFY SUCH TO THE SECRETARY OF TREASURY. THIS DETERMINATION WOULD NECESSITATE THE SECRETARY OF TREASURY PROHIBITING THE IMPORTATION INTO THE UNITED STATES OF ALL SHRIMP AND SHRIMP PRODUCTS FROM BRAZIL. IN VIEW OF THE ARBITRARY ACTIONS TAKEN BY BRAZIL AND ITS FAILURE TO NEGOTIATE IN GOOD FAITH, IT WOULD ALSO APPEAR THAT YOU SHOULD RECOMMEND TO THE SECRETARY OF TREASURY THAT ALL OTHER FISH AND FISH PRODUCTS OF BRAZIL BE PROHIBITED FROM BEING IMPORTED INTO THE UNITED STATES.

WE WOULD APPRECIATE YOUR IMMEDIATE ATTENTION TO THIS MATTER AND WE AWAIT YOUR COMMENTS.

----- SINCERELY,

ROBERT L. LEGGETT, CHAIRMAN EDWIN B. FORSYTHE
SUBCOMMITTEE ON FISHERIES RANKING MINORITY MEMBER
AND WILDLIFE CONSERVATION
AND THE ENVIRONMENT (UNQUOTE).

CHRISTOPHER

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